



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,920	11/14/2003	Evert de Boer	85773-277C	7649

26123 7590 07/22/2005

BORDEN LADNER GERVAIS LLP
WORLD EXCHANGE PLAZA
100 QUEEN STREET SUITE 1100
OTTAWA, ON K1P 1J9
CANADA

EXAMINER

TON, DANG T

ART UNIT	PAPER NUMBER
----------	--------------

2666

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/706,920	Applicant(s) DE BOER ET AL.	
	Examiner DANG T. TON	Art Unit 2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2666

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 3-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,658,013 in view of Sandesara (5,179,548).

For claims 1 and 3-23, the claims 1-8 of the patent number 6,658,013 disclose a method/system comprising:

designating one common network element as a primary gateway node and another common network element as a secondary gateway node;

at the primary gateway node, establishing a primary inter-ring connection for delivery of said service between the first and second rings;

Art Unit: 2666

and at the secondary gateway node, monitoring the status of the primary gateway node and establishing a new inter-ring connection for delivery of said service upon failure of the primary gateway node.

wherein at least one ring is a two-fiber bi-directional line-switched ring.

wherein at least one ring is a four-fiber bi-directional line-switched ring.

wherein the first ring is a two-fiber bi-directional line-switched ring and the second ring is a four-fiber bi-directional line-switched ring.

wherein adjacent network elements in the first ring are connected by a first working path and by a first protection path;

wherein adjacent network elements in the second ring are connected by a second working path and by a second protection path; wherein the primary inter-ring connection is established between the working path of the first ring and the working path of the second ring;

and wherein the new inter-ring connection is established between the protection path of the first ring and the protection path of the second ring.

wherein adjacent network elements in the first ring are connected by a first working path and by a first protection path;

wherein adjacent network elements in the second ring are connected by a second working path and by a second protection path;

wherein the primary inter-ring connection is established between the working path of the first ring and the working path of the second ring;

and wherein the new inter-ring connection is established between the working path of the first ring and the protection path of the second ring.

wherein adjacent network elements in the first ring are connected by a first working path defining a first inter-gateway working segment between the primary and secondary gateway nodes and by a first protection path;.

wherein adjacent network elements in the second ring are

Art Unit: 2666

connected by a second working path defining a second inter-gateway working segment between the primary and secondary gateway nodes and by a second protection path;

wherein the primary inter-ring connection is established between the working path of the first ring and the second inter-gateway working segment;

and wherein the new inter-ring connection is established between the protection path of the first ring and the working path of the second ring.

wherein adjacent network elements in the first ring are connected by a first working path defining a first inter-gateway working segment between the primary and secondary gateway nodes and by a first protection path;

wherein adjacent network elements in the second ring are connected by a second working path defining a second inter-gateway working segment between the primary and secondary gateway nodes and by a second protection path;

wherein the primary inter-ring connection is established between the first inter-gateway working segment and the working path of the second ring;

and wherein the new inter-ring connection is established between the working path of the first ring and the protection path of the second ring. (NOTE see claims 1-8 of the patent).

For claims 1 and 3-23, the claims 1-8 of the patent disclose all the subject matter of the claimed invention with the exception maintaining non-consumption of inter-ring when non failure status and consumption of inter-ring when failure status in a communications network. Sandesara from the same or similar fields of endeavor teaches a provision of bi-directional rings being employed a loop back technique and two additional protection transmission links which remain unused under normal operations. Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use maintaining non-consumption of inter-ring when non failure status and consumption of inter-ring when failure status in a communications network as taught by Sandesara in the communications network of the claims 1-8 of the patent.

The non-consumption of inter-ring when non failure status and consumption of inter-ring when failure status in a communications network as taught by Sandesara can be implemented/modified into the system of claims 1-8 of the patent since it does teaches back up rings when it is failed.

Art Unit: 2666

Using maintaining non-consumption of inter-ring when non failure status and consumption of inter-ring when failure status in a communications network as taught by Sandesara into the system of the claims 1-8 of the patent being that it provides the system more reliable since it can have a back up ring when failed.

2. Applicant's arguments with respect to claims 1 and 3-23 have been considered but are moot in view of the new ground(s) of rejection.


3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANG T. TON whose telephone number is 571-272-3171. The examiner can normally be reached on MON-WED, 5:30 AM-6:00 PM and Thur 5:30-9:30 A.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2666

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Ton


DANG TON
PRIMARY EXAMINER